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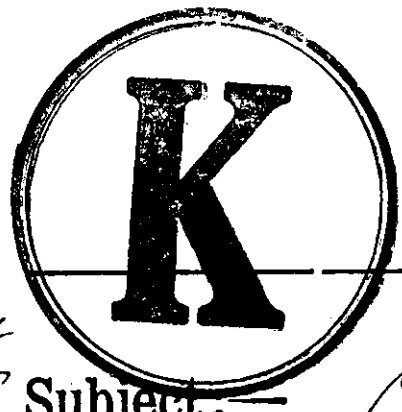

Legal **DEPARTMENT**

A **BRANCH**

A/11 **Subject.**— Opinions regarding Deccan College.

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Submitted.

It appears that when the Deccan College Trustees met the H.P.M. to discuss the question of disposal of the Deccan College property mention was made of the fact that Government has so far failed to implement the undertaking in para 6(b) and 9 of the Schedule i of the Trust Deed relating to the Department of Experimental Psychology. From the Report of the D.P.I. at p. 7 ante, it appears that in accordance with para 6(b) and 9 of the Schedule, Government undertook to start a Department of Experimental Psychology and that as a part of the scheme, it was proposed to start a Secondary Training College; but that as Karnatak desired to have the S.T. College in Karnatak, the proposed College was opened at Belgaum. The decision to start the College at Belgaum instead of at Poona was, it is stated, taken in consultation with the Law Officers. The D.P.I. further states that as Government will be paying a substantial recurring grant to the proposed Poona University, in which there will be a Department of Experimental Psychology, it would be in a way a fulfilment of the undertaking given the Trust Deed, as the Deccan College, will itself be closely integrated with the Poona University.

In his note dated 24-9-47, the Jt. Secy. Education Deptt. states that he is not very sure about the Legal position. According to him the main question is about the obligation under para. 9 of the consent decree and the limits within which the scheme can be varied by Government under para 11 with special

reference to the obligations imposed under para. 9. Accordingly the papers are being shown to R.L.A. for confirming or otherwise the legality of the action taken by Government (vide the note at pp. 10-11 ante).

Paragraph 6 of the Consent decree declares the following to be the objects of the trust:- * Print at p. 3 ante.

(a) In general for exclusive educational uses;

(b) In particular -

(i) for post-graduate and higher study in arts and science;

(ii) for post-graduate study and research in liguistics, history andexperimental psychology.

Paragraph 8 declares that Government should maintain in the said buildings an institution in the name of the Deccan College for the purposes of carrying out any one or more of the aforesaid (i.e. those mentioned in Paragraph 6) objects to the extent to which Government in their discretion think fit.

Then Paragraph 9 declares that for facilitating the study of experimental Psychology, Government will maintain an institution, as part of the Deccan College, and intended for the training of students in courses leading up to the university degrees in education and teaching.

Paragraph 11 empowers Government to modify the scheme, subject to the condition that such modification should be in consonance with the main objects of the trust.

In 1938, the question referred to R.L.A. was whether there is a liability on Government to open a Secondary Teachers' Training College teaching for the B.T. degree of the Bombay University. Regarding this question, after considering the Paragraphs of the decree mentioned above and the syllabuses of study for the B.T. and M.Ed. degrees, R.L.A. ~~ADVISED~~ advised: *pp. 17, 21

"Under the terms of the consent decree, it is open to Government to provide for training for that degree or any other degree in teaching and education of any other University. However, paragraph 11 of the consent decree empowers Government to modify the scheme in consonance with the objects mentioned in paragraph 6. If, however, Government find it difficult to provide at the Deccan College for any course for the training of students for degrees in Education and Teaching of any University, it would be open to them to modify the scheme. Such modification would not be contrary to the objects mentioned in paragraph 6. But in order to avoid any difficulties before such modification is made it would be desirable to obtain the consent of the trustees."

p. 22, G.D. file 6558 I

The Advocate General, who was consulted opined:-

"There is nothing in the scheme which compels an institution being run for training students for the B.T. examination. The requirements of clause 9 will be complied with even if students are trained for the M.E. degree."

Relying on those opinions Government decided to divert the B.T. College to Belgaum but no steps appear to have been taken to modify those terms of the scheme, as advised by the A.L.A. or to provide for courses for M.E. degree as advised by the Advocate General. So long as paragraph 9 is not modified Government remains liable to provide and Institution for the study of Psychology. This obligation could have been discharged by providing for M.E. degree or by modifying the scheme. It is true that paragraph 9 does not require Government to

carry out all the object mentioned in paragraph 6; but this paragraph has to be read with paragraph 9 which expressly declares the liability of Government to maintain an institution for facilitating the study of experimental Psychology intended for the training of students in courses leading upto the university degrees in education and teaching. As this obligation does not appear to have been fulfilled the contention of the Trustees appears to be well founded. The only course now open to Government is either to modify the scheme or to fulfil the obligation.

Clauses 6 and 8 of the Schedule to the consent decree would by themselves have released Govt. from the liability to provide in the Deccan College for post graduate study and research in experimental psychology provided Govt. had made provision for any one or more of the other objects mentioned in cl. 6 to the extent of the financial liability specified in cl. 8. But cl. 9 which required Govt. to maintain for facilitating the study of experimental psycholo.. an institution as part of the Deccan College andintended for the training of students in courses lending up to the university degree in education and teaching appears to be a special provision not controlled by cl. 8. Under cl. 11 Govt. is empowered to modify the scheme outlined above but such modification should be in consonance with the objects mentioned in cl. 6 above. To provide for the post-graduate study and research in experimental psychology is one of the objects of the Trust and a special provision is made in cl. 9 for carrying out this object. Consequently, it is doubtful whether it would be competent for Govt. to modify without the consent of the Trustees the shheme releasing

itself from the liability under cl. 9. As advised by the Advocate General in his opinion dated 12.9.1938 to comply with the requirements of cl. 9 it appears necessary to provide for training of students for the M.E. degree. The fact that Govt. has made provision at Belgaum for the course of study for the B.E. degree would not be a valid ground to justify Govt.'s default in fulfilment of its obligation under cl. 9.

Sd/- E.L.A.

E.L.A. has discussed this case with me. As directed by him I suggest the following reply:

EVT. 08/6.

Office of the Trust

Clause 6 of the scheme provides that the object of the Deccan College Fund Trust is to utilise the immovable properties, etc., for the purposes described in sub-clauses (a) and (b) of that clause. Under clause 7 the Trustees are to permit the establishment and maintenance in the buildings of an institution in the name of the Deccan College for the purpose of carrying out any one or more of the aforesaid objects. The expression "aforesaid object" is also used in clause 8. Presumably, therefore, by "aforesaid objects" is meant the "purposes" contained in sub-clauses (a) and (b) of clause 6. These purposes or objects are distinctly set out in sub-clauses (a) and (b) of clause 6. Each of them is a self contained, though composite, object. The first is the educational use particularly for post-graduate and higher study in Arts and Science, and the second is the post-graduate study and research in Linguistics, History and Experimental Psychology with special reference to education. The words "any one or more of the aforesaid objects" used in clauses 7 and 8 cannot be construed to mean any one or more of the individual items contained in the object as described in sub-clause (b). In other words, clauses 7 and 8 do not confer upon Government any discretion to choose between the several subsidiary items such as (1) Linguistics, (2) History and (3) Experimental Psychology. Government could have established an institution for the object described in sub-clause (a). In fact, they have established an institution

for the object described in sub-clause (b); and to this latter object the further limitation of funds at the disposal of Government would not strictly be applicable. Once Government decided to conduct an institution for post-graduate study and research in linguistics, History and Experimental Psychology, it was incumbent upon them to make provision for Experimental Psychology. That follows from the latter part of clause 8, but more particularly from the express provisions of clause 9, wherein it is stipulated that for facilitating the study of Experimental Psychology Government will maintain an institution as part of the Deccan College and intended for the training of students in courses leading up to the University degree in education and teaching, and that for this purpose Government will provide an initial equipment grant of Rs. 8,000 and for the maintenance of the institution Government shall also spend such amount as may be necessary to maintain the institution efficiently, subject to their right to increase or reduce the amount according to financial requirements. It can even be successfully contended that, had Government decided to implement the object in sub-clause (a) of clause 8 in preference to that contained in sub-clause (b), it would still have been obligatory upon Government to maintain the institution for the study of Experimental Psychology in the manner provided by clause 9, on the ground that this is an independent clause containing a special provision not controlled by clause 8. It follows, therefore, that, having decided to maintain an institution for the composite group of items included in the object contained in sub-clause (b) of which Experimental Psychology is one integral part, it is not possible for

Government to escape the obligation of maintaining an institution for Experimental Psychology as provided by clause 9.

2. There is nothing in the A.G.A.'s opinion dated the 11th August 1938 or in the opinion of the Advocate General (Mr. M.C. Setalvad) dated the 12th August 1938, which authorised diversion of the institution referred to in clause 9 of the scheme or the funds relating thereto from Poona to Belgaum. On the other hand, after considering the relevant provisions of the scheme and the syllabuses of study for B.T. and M.Ed. degrees, the A.G.A. advised that is open to Government to provide for training for B.T. degree or any other degree in teaching and education of any other University and that, if Government find it difficult to provide at the Poona College for any course for the training of students for degrees in education and teaching of any University, it would be open to Government to modify the scheme. The Advocate General, who agreed with the A.G.A.'s view, stated that there is nothing in the scheme which compels an institution being run for training students for B.T. examination and that the requirements of clause 9 would be complied with even if students were trained for M.Ed. degree. It is, therefore, clear that both these opinions were directed to the question whether the proposed institution under clause 9 of the scheme should be a college for training students for B.T. degree of the Bombay University or for training them for M.Ed. or any other degree of any other University.

3. Presumably there has so far been no modification of the scheme in this matter. Even the modification shall be in consonance with the object mentioned in clause 6, and it is therefore doubtful whether it would be permissible to have a modification which seeks to disintegrate the composite group of objects contained in sub-clause (b) of clause 6. Moreover, as advised by the R.L.A. in his opinion dated the fifth August 1938, in order to avoid any difficulty before such modification is made, it would be desirable to obtain the consent of the Trustees.

Sd/- P.M. LAD,
Remembrancer of Legal Affairs.

U.R. to R. & I.D. No. 856, dated the 26th January 1948.

EVY. 29/5.

Please see R.L.A's opinion No. 856, dated 26th January 1948 and the note of the Jt.Secy. E. & I.D. dated 27.2.1948.

2. In his said note Jt. Secy. E. & I.D. states as follows:-

"The R.L.A. has stated that the word "objects" occurring in clauses 7 and 8 refers to the "purposes" mentioned in clause 6. It is doubtful if this interpretation would be correct. Particularly as the qualifying words in clauses 7 and 8 are "one or more" and not "either or both".

Moreover, the purposes in clause 6 are not mutually exclusive as the "objects" in clauses 7 and 8 would naturally be interpreted to be.

Clearly the Scheme has been drafted very loosely. Besides the difficulties apparent in the interpretation of clauses 6, 7 and 8, clause 9 rather stands loosely by itself when in fact, it is a part of the "purposes" or "objects".

3. He, therefore, desires the R.L.A. to consider the points raised by him.

4. It is true that the Scheme has been drafted rather loosely and that itself explains the use of the expression "one or more" in clauses 7 and 8. It is a well-known rule of construction that every deed must be construed as a whole and according to the intention of the parties, and the intents ought to be judged of the several parts of the

deed as a general issue out of the evidence and not out of one word only. Especially in the case of trusts, which are to be ruled and governed according to the intent of the parties where such intent is consistent with the rules of law, the court will from the general frame of a testament or a settlement, collect the intent, contrary to the expressed words of a particular clause (see Norton on Dees, 2nd Edn. pp. 83-84). Moreover, it appears from the earlier part of sub-clause (a) of clause 6 that apart from the particular purposes set out in the latter part of sub-clause (a) and in the sub-clause (b) the trust property should also be utilised for general educational uses other than those specifically set out. This fact may also to a certain extent account for the use of the expression "one or more".

5. As has already been pointed in the R.L.A's opinion dated 26-1-48, but once the clause of the purpose in (b) was made, Govt. is required, to carry it out as a whole and cannot claim any discretion to make a further selection before the several subsidiary items comprised in it.

6. The points raised by Jt. Secy. E. & I.D. were considered by the R.L.A. while giving his opinion dated 26-1-48 and no fresh reason for reconsideration has been shwon. It E. & I.D. has any doubts in the matter it will be advisable to obtain the Advocate General's opinion.

If R.L.A. agrees reply may be in terms of paragraph 4-7 of of the note.

Sd/- RDN. -18/3.

EVY. 30/5

Office of the A.G.

It is true that the Scheme has been drafted rather loosely and that itself explains the use of the expression "one or more" in clauses 7 and 8. It is a well-known rule of construction that every deed must be construed as a whole and according to the intention of the parties, and the intents ought to be judged of the several parts of the deed as a general issue out of the evidence and not out of one word only. Especially in the case of trusts, which are to be ruled and governed according to the intent of the parties where such intent is consistent with the rule of law, the court will, from the general frame of a testament or a settlement, collect the intent, contrary to the expressed words of a particular clause (see Norton on Deeds, 2nd Edn. pp.83-84). Moreover, it appears from the earlier part of sub-clause (a) of clause 6 that, apart from the particular purposes set out in the latter part of sub-clause (a) and in the sub-clause (b), the trust property should also be utilised for general educational uses other than those specifically set out. This fact may also to a certain extent account for the use of the expression "one or more".

3. The argument based upon the supposed conflict of interpretation on the assumption that the "purposes" in clause 6 are not mutually exclusive while the "objects" in clauses 7 and 8 would be so is not very helpful. Clause 6 merely indicates the various objects for which the properties, etc. can be used. It is only an enabling clause, whereas clauses 7 and

8 cast a duty respectively on the Trustees and on Government of permitting the maintenance and actual maintenance of the properties, etc., for any one or all of the objects. There is no indication of mutual exclusiveness in clauses 7 and 8, since all the objects could have been simultaneously adopted had Government so willed. The choice of the objects was of course left to Government's discretion.

3. As has already been pointed in the R.L.A.'s opinion dated 26-1-1948, once the choice of the purpose in (b) was made, Government is required to carry it out as a whole and cannot claim any discretion to make a further selection between the several subsidiary items comprised in it.

4. The points raised by Jt. Secy., E. & I.D. were considered by the R.L.A. while giving his opinion dated 26-1-1948 and no fresh reasons for reconsideration has been shown. If E. & I.D. has any doubts in the matter, it will be advisable to obtain the Advocate General's opinion.

Sd/- P.M. LAD, - 23/3.

Remembrancer of Legal Affairs.

U. R. to E. & I.D. No. 2903 dated 24th March 1948.

EVY. 30/5.